

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

77-2017

In the
United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 77-2017

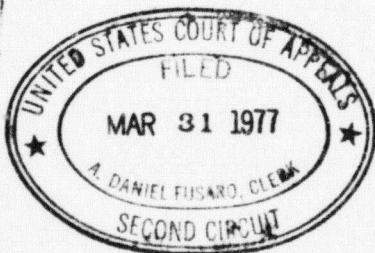
SALVATORE ANNUNZIATO,
Appellee

vs.

JOHN R. MANSON, COMMISSIONER OF CORRECTIONS,
Appellant

On Appeal from the United States District Court
for the District of Connecticut

JOINT APPENDIX



ARNOLD MARKLE
State's Attorney
New Haven County
ERNEST J. DIETTE, JR.
Assistant State's Attorney
235 Church Street
New Haven, Connecticut 06510

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, Ex REL.

SALVATORE ANNUNZIATO

Relator,

vs.

JOHN R. MANSON

Respondent
CIVIL ACTION
No. H-75-387

AMENDED PETITION FOR WRIT OF
HABEAS CORPUS

TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

The petition of SALVATORE ANNUNZIATO respectfully shows:

1. The respondent John R. Manson is the Commissioner of Corrections of the State of Connecticut, and has jurisdiction and control over the Correctional Institutions and Community Correctional Centers of the State of Connecticut.

2. Petitioner makes application herein for a writ of habeas corpus in that he is unlawfully detained and restrained of his liberty by said respondent who is holding him in custody by virtue of an outstanding sentence of the Superior Court within and for New Haven County.

3. Said detention is as a result of judgment of conviction in the Superior Court for New Haven County, at New Haven, on the charge of conspiracy, Section 54-197 Conn. Gen. Stats. Hon. Herbert S. MacDonald, on April 2, 1971, imposed a sentence of nine to fourteen years.

4. Petitioner's trial was conducted in violation of his rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, in the following respects:

A. Petitioner was denied his constitutional right of confrontation of witnesses. (See *Alford v. United States*, 282 U.S. 687 (1931); *Davis v. Alaska*, 415 U.S. 308 (1974); *United States v. Masino*, 275 F.2d 129 (2d Cir. 1960).

i. The State's principal witness against the defendant was Bruno Pino. On cross-examination, the defendant was not permitted to elicit testimony that Pino had felony charges pending against him in the same court, in order to show the witness's bias, motive and interest in testifying. (See Appendix A) As there were no other means available to establish the pendency of those charges, the jury was thus left with no evidence before it from which to draw an inference of bias, interest or motive.

ii. The Supreme Court of the State of Connecticut held that the trial court's rulings were erroneous and that Pino's testimony "tended toward proof of the crime charged." (37 Conn. L.J. No. 12, p. 11) However, it mistakenly held that the evidence of the pending charges, "would have been purely cumulative and of no real significance." (*Id.*), thus finding the error harmless to the defendant. See "Motion to Reargue", attached hereto as Appendix B.

iii. *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824 (1967), requires as a matter of constitutional law that the State prove beyond a reasonable doubt that a constitutionally erroneous ruling did not contribute to the conviction. The exclusion of the only evidence available to the defendant to show the bias, interest and motive of the State's chief witness simply cannot pass the *Chapman* test. The defendant's conviction and the Supreme Court's denial of his appeal were in violation of his rights under

the Sixth and Fourteenth Amendments to the Constitution.

iv. Judith Papero was a rebuttal witness for the State, whose testimony was intended to bolster that of the alleged victim (Gould), who had testified during the State's case-in-chief. The defendant offered considerable evidence that Gould had been intoxicated the evening he was shot, and the bartender testified that the victim had in fact fallen off of the bar stool on which he was sitting. Papero, a barmaid in the restaurant, testified for the State that another person had fallen, not the victim. The victim's intoxication was a material issue, and important to the defense. See "Motion to Reargue", attached hereto as Appendix B.

On cross-examination, the defendant was not permitted to elicit evidence of felony charges pending against her in the same court, to show her bias, interest and motive in testifying. (See Appendix C) The Supreme Court held that the ruling was erroneous, but harmless because her testimony "did not tend toward proof of the crime charged." (37 Conn. L.J. No. 12, p. 12) Such a conclusion is clearly impermissible by constitutional standards. (See Appendix B)

B. The petitioner was denied due process of law and a trial by jury, as guaranteed by the Sixth and Fourteenth Amendments to the Constitution, by the failure of the trial court to charge the jury, as requested, with respect to motive.

i. Motive was a highly-contested issue in the case and considerable evidence of absence of motive was presented. The court failed to grant the following request to charge:

32. If no motive to murder Edward Gould can be inferred or found, that may well tend to raise a reasonable doubt as to the guilt of the defendant.

ii. The Connecticut Supreme Court held that the charge should have been given, but failed to deal with this error in constitutional terms, erroneously applying a lesser standard of review. The United States Supreme Court has held that "the absence of evidence suggesting a motive. . . is a circumstance in favor of the accused," *Pointer v. United States*, 151 U.S. 396, 414 14 S. Ct. 410 (1894). By failing to present this circumstance to the jury for their consideration, the court deprived the petitioner of his right to have the facts and the issue of his guilt fully and fairly determined by a jury.

C. Absence of motive, and the expectation or hope of key prosecution witnesses that, by aiding in the conviction of the petitioner, they might be rewarded by leniency in the disposition of their own cases were material facts at Petitioner's trial. As a result of the erroneous rulings set forth above, the merits of the factual dispute were not resolved in the State court hearing, the fact-finding procedure employed by the State court was not adequate to afford a full and fair hearing, the material facts were not adequately developed at petitioner's trial, and the petitioner did not receive a full, fair and adequate hearing.

D. Petitioner was denied due process of law, as guaranteed by the Fourteenth Amendment, by the State's circumvention of its independent responsibilities arising under *Brady v. Maryland*, 373 U.S. 83 (1963) in failing to disclose all exculpatory material relative to its key witnesses.

5. Petitioner has exhausted all State remedies, as required by 28 U.S.C. §2254.

A. Petitioner filed an appeal to the Supreme Court of the State of Connecticut on April 2, 1971, which appeal was denied

on September 16, 1975. (See *State v. Annunziato*, 37 Conn. L.J. No. 12, pp. 9-16)

B. Petitioner filed a Motion to Reargue with the Supreme Court of the State of Connecticut on September 25, 1975, which motion was denied on October 7, 1975.

C. Petitioner applied for a Writ of Habeas Corpus to the Superior Court of the State of Connecticut for the County of Litchfield on February 11, 1976. After hearing, said application was denied on July 7, 1976. Petitioner filed a Petition for Certification for review to the Supreme Court of the State of Connecticut, which petition was denied on July 15, 1976. A copy of the record in said action is attached hereto as Appendix D.

6. A. Petitioner previously applied to this court for writ of habeas corpus on April 20, 1974 (amended petition dated June 5, 1974, and filed with the Clerk of this court June 11, 1974). That petition (Civil No. H-74-137) was dismissed December 27, 1974, pursuant to a Memorandum of Decision dated December 19, 1974, in which the Honorable M. Joseph Blumenfeld held that Petitioner had failed to exhaust his State remedies, citing Petitioner's right to proceed before the Connecticut Supreme Court.

B. Petitioner's appeal having been denied by the Connecticut Supreme Court, he has now exhausted his State remedies in compliance with Judge Blumenfeld's Memorandum of December 19, 1974.

C. Although petitioner in his previous application raised many of the same grounds contained herein, petitioner's claims have not been dealt with by this court by virtue of its dis-

missal of the previous application for failure to exhaust State remedies.

WHEREFORE Petitioner prays:

1. That a writ of habeas corpus be directed to the respondent issued on his behalf so that Petitioner may be brought before this court.
2. That respondent be required to appear and answer the allegations of this petition.
3. That, after full and complete hearing, this court relieve Petitioner of the unconstitutional detention and imprisonment.
4. That the court grant such other further, and different relief as to the court may seem just and proper under the circumstances.

The Petitioner

SALVATORE ANNUNZIATO

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, Ex REL.

SALVATORE ANNUNZIATO

Relator,

vs.

JOHN R. MANSON

Respondent
CIVIL ACTION
No. H-75-387

AMENDED RETURN TO PETITION FOR
WRIT OF HABEAS CORPUS

1. The Respondent admits Paragraphs 1, 2, and 3 of the Amended Petition.
2. Paragraphs 4A., B., C., and D are denied.
3. Paragraph 5 is admitted in its entirety.
4. Paragraph 6 is admitted in its entirety.

The Respondent
JOHN R. MANSON

UNITED STATES OF AMERICA, Ex REL.

SALVATORE ANNUNZIATO

Relator,

v.s.

JOHN R. MANSON

 Respondent
 CIVIL ACTION
 No. H-75-387

MEMORANDUM OF DECISION

The petitioner, Salvatore "Midge" Annunziato, is currently serving a sentence of *nine to fourteen years* in the Connecticut Correctional Center at Litchfield as a result of his 1971 conviction in New Haven County Superior Court for conspiracy to commit murder. Petitioner bring this writ for habeas corpus contending both that the failure of the state to disclose exculpatory evidence relative to the interest of a key witness and the denial by the trial court to allow cross-examination as to *pending criminal charges* against two prosecution witnesses deprived him of his right to a fair trial as guaranteed by the fifth, sixth and fourteenth amendments to the Constitution.¹ See *Brady v. Maryland*, 373 U.S. 83 (1963); *Davis v. Alaska*, 415 U.S. 308 (1974).

Petitioner's original appeal to the Connecticut Supreme Court was denied on September 16, 1975. *State v. Annunziato*,

¹ Petitioner also alleges that the failure of the trial court to grant a request to charge as to lack of motive was constitutional error. This claim is not supported by *Pointer v. United States*, 151 U.S. 396 (1894), upon which petitioner relies. In the context of the entire charge and the evidence presented at trial, I find that the court's refusal to give the requested charge would not require a new trial. *Schaefer v. Leone*, 443 F.2d 182 (2d Cir.), *cert. denied* 404 U.S. 939 (1975)

169 Conn. 517 (1975). Following an order of this court concerning a failure to exhaust state remedies regarding his *Brady* claim, petitioner applied for a writ of habeas corpus in Litchfield County Superior Court. That writ was dismissed in an unreported opinion on July 7, 1976. *Annunziato v. Manson*, Docket No. 25,827 (Superior Ct. Litchfield Cnty.). A Petition for Certification for review to the Connecticut Supreme Court was denied on July 15, 1976. It is conceded by the state that petitioner's claims are now properly before this court. *Neither party has requested an evidentiary hearing, both sides preferring to rest on the record made in the state courts.* The petitioner makes the point, from several different quarters, that he was unconstitutionally prevented from impeaching the state's principal incriminating witness. These arguments will be separately considered.

FACTS

Petitioner was convicted of conspiracy to murder one Edward Gould on the night of August 10, 1968. From the evidence introduced at trial, the jury could have found that petitioner was at a party at Chip's Lounge in Fair Haven that evening. Gould was drinking at the bar. He observed Annunziato consult in a whisper with Richard Biondi, an associate of Annunziato.² Biondi, who had arrived at the party with a woman named Regina Baker, told Bruce Pino, another guest, "Take Regina home because I have some business to do for Midgie [Salvatore Annunziato]."³ When Gould left the

² Biondi, an alleged co-conspirator, died prior to petitioner's trial.

³ Trial Transcript at 687, *State v. Annunziato*, Petitioner's Exhibit A [hereinafter Tr.].

restaurant, he was met by Biondi and Francesco Annunziato, petitioner's son. They asked Gould to give them a lift to Francesco's car. While Gould was driving he saw a gun in the rearview mirror. He was wounded as he jumped from the moving vehicle.

The next day, Bruce Pino overheard a conversation between petitioner and his son at Mike's Restaurant. According to Pino, Salvatore Annunziato swore and said in an angry tone, "You can't do anything right."⁴

About two years later, in March 1970, the victim Edward Gould had a conversation with petitioner in which he asked "what the reason was that he wanted to kill me." Petitioner responded, "I want to kill you because you killed my brother-in-law."⁵ Sonnie Gondak, Salvatore Annunziato's brother-in-law, had died in a hit-and-run accident in 1963. In addition, there was some testimony from which the jury could have inferred that petitioner and Gould belonged to rival and antagonistic groups of associates.

THE RIGHT-TO-CONFRONTATION CLAIM

Petitioner argues he was denied his sixth and fourteenth amendment rights to confront the witnesses against him by the refusal of the trial court to allow him to interrogate *two prosecution witnesses* regarding charges pending against them in state court to demonstrate their bias, interest, or motive. Bruce Pino, a crucial prosecution witness, had been arrested for possession of narcotics and charged as a second offender

⁴ Tr. 696.

⁵ Tr. 78.

in 1968.⁶ In addition, Judith Papero, a rebuttal witness for the state, had been arrested for sale of narcotics prior to petitioner's trial. Although the Connecticut Supreme Court ruled that evidence as to these pending charges was admissible to show the witnesses' bias, *see State v. Moynahan*, 164 Conn. 560, 601-03 (1973), it held that the failure to permit such testimony was *harmless* in petitioner's case. It is unclear whether the Connecticut Supreme Court applied a constitutional standard in rejecting petitioner's claim, or only one of evidentiary procedure.⁷

Clearly, not every evidentiary ruling during a state criminal trial rises to a constitutional dimension so as to require federal relief on habeas corpus. *Robinson v. Chesney*, 403 F. Supp. 306, 309 (D. Conn. 1975), *aff'd*, 538 F.2d 308 (2d Cir.), *cert. denied*, 45 U.S.L.W. 3254 (U.S. Oct. 4, 1976). However, the

⁶ In fact, petitioner later discovered that Pino had made an extensive agreement with the federal and state authorities to obtain immunity on these charges and others in return for his testifying against Annunziato.

⁷ See Respondent's Memorandum of Law at 6-10; Petitioner's Motion to Reargue, *State v. Annunziato*, No. 7451 (Supreme Ct. Sept. 25, 1975), Exhibit B to Petition for Writ of Habeas Corpus. In finding the trial court's rulings harmless, Judge Loiselle cited *Milton v. Wainwright*, 407 U.S. 371 (1972), *United States v. Reed*, 437 F.2d 57 (2d Cir. 1971), *Ray v. United States*, 412 F.2d 1052 (9th Cir. 1969), *State v. Tropiano*, 158 Conn. 412 (1969), *State v. Fredericks*, 154 Conn. 68 (1966); *DeCarufel v. Colonial Trust Co.*, 143 Conn. 18 (1955). *Milton v. Wainwright* and *United States v. Reed* were both holdings that error as to a constitutional right was harmless beyond a reasonable doubt. The other decisions appear to concern the prejudice of erroneous evidentiary rulings.

right to cross-examine a witness to impeach his credibility or show motive or prejudice is fundamental to a fair trial. *Davis v. Alaska*, 415 U.S. 308 (1974). A defendant has a constitutional right to cross-examine a witness to show a bias arising out of a government *offer of leniency or immunity*. *Alford v. United States*, 282 U.S. 687 (1931);^s *Flemmi v. Gunter*, 410 F. Supp. 1361, 1371 (D. Mass. 1976). Such evidence, which demonstrates a special motive to lie, is peculiarly probative "for if believed it colors every bit of testimony given by the witness whose motives are bared." *United States v. Blackwood*, 456 F.2d 526, 530 (2d Cir. 1972); *United States v. Harvey*, F.2d , Docket No. 76-1183, slip op. 6029 at 6032-36 (2d Cir. Nov. 24, 1976). See also *United States v. Rosner*, 516 F.2d 269, 273 n.2 (2d Cir. 1975), *cert. denied*, 44 U.S.L.W. 3756 (U.S. June 30, 1976). As Chief Justice Burger reiterated in *Davis*, 415 U.S. at 318, the denial of the "right to effective cross-examination . . . "would be constitutional error of the first magnitude and no amount of want of prejudice would cure it." *Brookhart v. Janis*, 384 U.S. 1, 3. *Smith v. Illinois*, 390 U.S. 129, 131 (1968)."

The limits placed on the cross-examination of Bruce Pino were unjustified, *cf. United States v. Harvey*, Docket No. 76-1183 (2d Cir. No. 24, 1976), and not harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18 (1967). Pino was a key witness in the prosecution of petitioner. Only Pino's testimony directly connected petitioner to any of the events on the evening of August 10, 1968. Pino's observations

^s Chief Justice Burger in *Davis v. Alaska*, 415 U.S. at 318 n.6, explained that although *Alford* dealt with a reversal because of abuse of discretion and prejudicial error, its holding was grounded in the Constitution.

plus Annunziato's statement to the victim two years after the shooting comprised the state's major evidence against the accused. The Connecticut Supreme Court pointed out that his "*testimony tended toward proof of the crime charged.*" *State v. Annunziato*, 169 Conn. at 525. On habeas, Judge Martin conceded that this testimony "if believed by the jury, was damaging to the petitioner and without . . . [it] a conviction might not have been obtained." *Annunziato v. Manson*, *supra* at 1-2. The Connecticut Supreme Court noted, however, that Pino's prior convictions⁹ and extensive drug use were before the jury and that defense counsel was able to cross-examine Pino as to the leniency he had received on federal bank robbery charges. The court concluded that:

"The added evidence that Pino had pleaded not guilty to narcotics charges would have been purely cumulative and of no real significance in view of the evidence showing the facts and circumstances surrounding Pino's decision to testify and the interest he had in testifying against the defendant, as well as the argument of defense counsel of such circumstances and the court's charge."

⁹ Defense counsel elicited the fact that Pino had been convicted of (1) possession of burglary tools; (2) four counts of statutory burglary; (3) conspiracy to commit bank robbery; and (4) possession and passing of counterfeit money. Counsel also brought out that Pino admitted to police committing arson, but had not been prosecuted for that offense. Unknown to counsel, Pino had confessed to the firebombing under a promise of immunity.

169 Conn. 517 at 526.¹⁰ The difficulty with that view is that it does not withstand analysis. *There is no need here to speculate in order to demonstrate the existence of prejudice. Brookhart v. Janis, supra.*

First, while Pino's record of prior convictions and drug use may have borne on his *general credibility*, these bad acts did not show a *continuing ulterior motive* or bias for testifying. *Davis v. Alaska* allows a defendant specially to impeach a witness by revealing "possible biases, prejudices, or ulterior motives . . . as they may relate directly to issues or personalities in the case at hand." 415 U.S. at 316. *See also United States v. Garrett*, 542 F.2d 23, 27 (6th Cir. 1976). The bank robbery plea negotiations at best indicated Pino's motive for cooperating in January 1970. But that charge had been disposed of well before the trial of petitioner in February 1971. On the other hand, the narcotics arrests were formal charges still hanging over Pino's head when he testified. *Evidence as to such new and different pending charges against Pino was not really "cumulative."* There is a sharp difference between leniency already afforded for convictions in the past and promises of more leniency in the future for additional offenses on which he was still open to conviction. *If petitioner had been allowed to inquire with respect to these arrests, he could have demonstrated Pino's present expectation of police and prosecutorial aid and protection in return for his testimony.* Petitioner might also have elicited the fact that Pino had made a deal with the prosecution regarding these charges. This is

¹⁰ It should be borne in mind, however, that the full disclosures of Pino's agreement with the government made at the later habeas hearing were not before the Connecticut Supreme Court on direct appeal.

not a case of a trial judge exercising his informed discretion in limiting cross-examination where the jury is already in possession of sufficient information concerning the witness' motives for testifying. Cf. *United States v. Turcotte*, 515 F.2d 145, 151 (2d Cir.), *cert. denied*, 423 U.S. 1032 (1975). Here, the jury was left without any direct evidence as to what power the state could still exert over Pino's freedom. Just as in *Davis v. Alaska*, counsel was *prevented* from making a record as to why an individual "might have been biased or otherwise lacked that degree of impartiality expected of a witness at trial." 415 U.S. at 318.

The denial of the sixth amendment right requires a new trial without any special showing of prejudice. Davis v. Alaska. Furthermore, in this case Annunziato was clearly harmed by the trial court's rulings. Pino was a major witness in this case. His credibility was of critical importance. By excluding evidence as to the pending charges, the trial court deprived petitioner of the opportunity to show Pino's bias and interest and so raise a reasonable doubt as to his own guilt.¹¹ *United States v. Harvey, supra.*

THE BRADY CLAIM

The harmful effect of the denial of the right to cross-examination protected by the sixth amendment, *Brookhart v. Janis, supra*, was further exacerbated by the prosecution's failure to disclose that the witness, Pino, had actually been promised

¹¹ As recognized by the Connecticut Supreme Court, state law requires that petitioner be afforded the opportunity to cross-examine Mrs. Papero as to her pending criminal charges if there is a retrial.

leniency and other extensive police aid in return for his testimony.

Prior to trial, petitioner filed two discovery motions—one seeking “exculpatory information or material;” the other requesting “any information . . . either in writing or retained in the memory of any [of the state’s] agents, concerning facts or factors which may in any way be favorable to the accused.” These motions were granted as required by *Brady v. Maryland*, 373 U.S. 83 (1963). The state represented that it had no exculpatory material in its possession.

In 1972, after the petitioner had been convicted and sentenced, Bruce Pino was again a witness for the prosecution in *State v. Porto*, Docket No. 16974 (Superior Ct. New Haven Cnty. 1972). As a result of Pino’s testimony in that trial, counsel for the petitioner discovered that back in 1970 Bruce Pino had made a deal with the state and federal governments that, in return for his giving evidence at petitioner’s trial and others, the pending state felony charges against him would be dropped, he would receive leniency on a bank robbery charge and immunity from prosecution for crimes to which he confessed while supplying information to the government. Pino admitted complicity in a shooting, a conspiracy to commit murder, a bank burglary, and a firebombing.¹² In addition, he was given police protection and promised, “they would move me and my family anywhere in the United States, change my name, get me a job, as long as I told the truth and every-

¹² Trial Transcript, *State v. Porto*, *supra* at 224, Petitioner’s Exhibit B.

thing.”¹³ This agreement was reached with Arnold Markle, the State’s Attorney for New Haven County, and representatives of the F.B.I. and the United States Attorney’s Office. The state has not challenged the accuracy of Pino’s account of the deal.¹⁴ Petitioner, relying on *Brady v. Maryland* and *Giglio v. United States*, 405 U.S. 150 (1972), argues that the suppression of this information by the state requires a new trial.¹⁵

A.

In *Giglio v. United States*, the Supreme Court found a denial of due process where the government’s case included false testimony concerning a promise of leniency to an important witness and the prosecution knew, or should have known, of the perjury. The failure to disclose such promises requires a new trial if “‘the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury.’” *Giglio v. United States*, 405 U.S. at 154, citing, *Napue v. Illinois*, 360 U.S. 264, 271 (1959).¹⁶ Petitioner maintains that the state’s repeated and successful objections to any mention of the pend-

¹³ *Id.* at 118.

¹⁴ See Transcript, *Annunziato v. Manson*, *supra* at 5, Appendix to Petitioner’s Amended Petition.

¹⁵ Judge Martin rejected the claim on habeas on the ground that this impeachment evidence would have been merely cumulative in light of Pino’s prior convictions and the fact that the lenient sentence he received on the bank robbery offense was before the jury.

¹⁶ The Supreme Court reaffirmed the vitality of *Giglio v. United States* in *United States v. Agurs*, 44 U.S.L.W. 5013, 5015 (U.S. June 24, 1976).

ing narcotics charges against Pino prevented the defense from revealing the existence of the deal, misled the jury concerning the witness' bias and interest, and so constituted false evidence of which the prosecutor knew or should have known. See *Boone v. Paderick*, 541 F.2d 447, 450 (4th Cir. 1976), *application for cert. pending*, 45 U.S.L.W. 3432 (U.S. Dec. 8, 1976).

The state's objections were grounded on the proposition that an arrest without conviction was not probative of the witness' credibility and that cross-examination as to any pending charge would have prejudiced the witness' presumption of innocence. *But see, State v. Moynahan*, 164 Conn. 560, 601-03 (1973). While the sustaining of the objection to inquiry about pending charges might not necessarily have prevented defense counsel from inquiring about other possible aspects of the deal, further cross-examination was not likely to be productive in view of testimony that left the impression that all of the government's promises had been revealed and fulfilled. *But that was not the case, and the government not only knew it, but participated in covering up the true situation.*¹⁷

¹⁷ The state attempts to derive some consolation from the fact that Assistant State's Attorney Gaffney who prosecuted the case may not have had actual knowledge of Pino's agreement with Gaffney's superior, State's Attorney Markle. However, *Giglio* makes clear that it is irrelevant whether the particular attorney who tried the case was aware of the deal:

"[W]hether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor. The prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes, to the Government."

On re-direct examination, Pino testified in response to questions by Assistant State's Attorney Gaffney:

"Q. Did anyone ask you to give a statement, 'Because we have to get Midge,' or words to that effect?

"A. No.

"Q. Did anyone ever make a promise for your testimony?

"A. No.

"Q. Has anyone ever made a deal to you or with you?

"A. No."¹⁸

This testimony, elicited by the prosecution, was false, even bordering on perjury. Clearly, the state should have known of the inaccuracy. On re-cross-examination, counsel for petitioner's co-defendant¹⁹ was able to bring out that a New Haven policeman had offered to speak on Pino's behalf concerning the bank robbery and other crimes to which Pino had confessed while providing information. But this limited amount of police aid is a far cry from the elaborate agreement and promises actually made. According to his own testimony in *State v. Porto*, Pino in January of 1970 had become a professional witness for the state concerning underworld activities. He was placed in protective custody, promised a new identity for himself and his family, and assured that he would not go to jail for *any* of his crimes. Mr. Markle, the State's Attorney for New Haven County who helped negotiate the agreement, did in fact *nolle* the pending possession of narcotics and second offender charges sometime after the conclusion of petitioner's trial. Pino's testimony concerning the extent and scope of his

¹⁸ Tr. 873-74.

¹⁹ Petitioner and his son, Francesco Annunziato, were tried jointly for conspiracy to commit murder.

cooperation with the prosecution was, at the very least, extremely misleading.

The applicable constitutional law has been cogently stated by Chief Judge Kaufman in *United States ex rel. Washington v. Vincent*, 525 F.2d 262, 267 (2d Cir. 1975):

"The knowing use by a state prosecutor of perjured testimony ordinarily results in a deprivation of fundamental due process, violating the 14th Amendment and requiring a new trial. *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S. Ct. 340, 79 L. Ed. 791 (1935) (per curiam); *Napue v. Illinois*, 360 U.S. 264, 269, 271-72, 79 S. Ct. 1173, 3 L. Ed.2d 1217 (1959); *Giglio v. United States*, 405 U.S. 150, 153, 92 S. Ct. 763, 31 L. Ed.2d 104 (1972). Whether the State solicits the false testimony or merely allows it to stand uncorrected when it appears does not diminish the viability of this principle. *Napue, supra*, 360 U.S. at 269, 79 S. Ct. 1173; *Giglio, supra*, 405 U.S. at 153, 92 S. Ct. 763; nor does the rule lose force because the perjury reflects only upon the credibility of the witness. *Napue, supra*, 360 U.S. at 269, 79 S. Ct. 1173. A conviction obtained through the use of testimony known by the State to be untrue must fall if

the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . . [or if] the false testimony used by the State in securing the conviction of petitioner may have had an effect on the outcome of the trial.

Napue, supra, at 271, 272, 79 S. Ct. at 1178;

Giglio, supra, 405 U.S. at 154, 92 S. Ct. at 766."

Based on my review of the transcript, it is clear to me that the state's misbehavior in this case could have affected the outcome of the trial. Pino was the state's chief witness against Annunziato. His testimony was all that directly tied petitioner to the shooting on August 10, 1968.

Annunziato's statement to the victim, almost two years after the fact, demonstrates animosity but does not by itself link Salvatore Annunziato to the 1968 murder attempt.

Pino's credibility was subjected to considerable scrutiny. Both sides elicited the fact that he had received leniency in the form of a suspended sentence on a bank robbery conspiracy offense in return for his testimony at petitioner's trial among others. In addition, the trial judge specially charged the jury concerning a possible interest or bias on Pino's part. But testimony of the complete deal would not have been merely cumulative. To assure his testifying, the police had promised to afford Pino with protection and provide him with a new home and identity. His own safety and continued well-being then depended upon his cooperation with the authorities. The pending drug possession and second offender charges are also significant. They were crimes still hanging over Pino's head, unlike the bank robbery for which he had already been sentenced. In the face of Pino's denial as to the existence of any promise and the suppression by the prosecution of the full terms of the deal, defense counsel's argument challenging Pino's motive and interest was reduced to speculation and inference. As Judge Craven noted on similar facts in ordering a new trial,

"No matter how good defense counsel's argument may have been, it was apparent to the jury that it rested upon conjecture—a conjecture which the prosecutor disputed."

Boone v. Paderick, 541 F.2d 447 at 451. However, if the full scope of his deal had been disclosed, the witness' interest would have become fact, not mere speculation. Only then could the jury fully and fairly assess his credibility. I conclude therefore that if Pino's arrangement with the govern-

ment had been completely delineated and his inducements to testify fully explored, there is a reasonable likelihood that the jury's judgment would have been affected.

B.

The petitioner also contends that even if the facts of this case do not present a prosecutorial failure to correct false testimony so as to invoke the sanctions of *Giglio v. United States*, the prosecution's suppression of the agreement still violated due process within the meaning of *Agurs v. United States*, 44 U.S.L.W. 5013 (U.S. June 24, 1976). In *Agurs*, the court held that where the prosecution fails to supply exculpatory evidence in response to a general request for *Brady* material,²⁰ a new trial is required if the omitted evidence would raise a reasonable doubt as to the defendant's guilt in the context of the entire record.²¹ There is no slide rule method for determining this. The standard is difficult to apply because it requires the reviewing court to subjectively weigh the evidence and assess its possible effect on the jury.²² See *Moynahan v. Manson*, 419 F. Supp. 1139, 1149 (D. Conn. 1976).

I note at the outset that the same standard applies whether the nondisclosed evidence goes to the fact of the crime or tends to impeach a critical witness. *United States v. Stassi*, Docket

²⁰ That is the situation in the instant case.

²¹ Therefore, under the *Agurs* standard, the defendant must demonstrate much greater prejudice than is required in the *Giglio* situation.

²² This review is made all the more problematic when, as here, the closing arguments of counsel have been omitted from the trial transcript.

No. 76-1110, slip op. 247 at 253-54 (2d Cir. Oct. 26, 1976), *application for cert. pending*, 45 U.S.L.W. 3450 (U.S. Dec. 22, 1976). Although the Supreme Court considered only exculpatory evidence in *Agurs*, the court's reasoning seems equally applicable to impeachment information withheld by the prosecution. Impeachment evidence may often be as significant as exculpatory evidence in determining the outcome of the trial. See *Garrison v. Maggio*, Docket No. 75-2798, — F.2d — (5th Cir. 1976), 20 Crim. L. Rept. 2188 (Wisdom, J., dissenting). As Chief Justice Warren pointed out in *Napue v. Illinois*, 360 U.S. 264, 269 (1959):

"The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."

See also *Giglio v. United States*, 405 U.S. at 153-54.

Although the jury did know of Pino's past inducements to cooperate with the police, they were kept in ignorance of his continuing motive and interest to testify for the state at the prosecution of Salvatore Annunziato in February of 1971. Pino had been sentenced on the conspiracy to commit bank robbery offense well in advance of petitioner's trial. The promise of leniency on the bank robbery charge provided an incentive for Pino to enter into a deal with the authorities in January 1970. Because the state suppressed the full terms of that arrangement, the jury could not have realized the extremely strong hold the state and federal governments had over Pino when he testified against Annunziato. His own safety was dependent upon the continued support of the police authorities. He might have to rely on the government to move him to a different part of the country and supply him with a

new identity. His criminal exposure for the drug possession charges and other admitted crimes was substantial. State's Attorney Markle did not *nolle* those drug charges until after Pino appeared as a witness in the Annunziato trial. As a result of this discretionary prosecutorial act, Pino was able to avoid even being subjected to the sentencing discretion of a neutral judicial officer regarding those crimes. The non-disclosed evidence thus detailed powerful inducements for Pino to testify in a manner helpful to the government. This evidence would have provided the factual basis missing at trial for defense counsel to challenge Pinos' interest and motivation for testifying. Based upon the knowledge gained from a review of the entire record, it is my opinion that, *if the full terms of the agreement had been presented accurately to the jury, that evidence would have created a reasonable doubt as to petitioner's guilt.* *Agurs v. United States*, 44 U.S.L.W. at 5017; *cf. Brach v. United States*, Docket No. 76-2040, slip. op. 5487 at 5490-91 (2d Cir. Sept. 9, 1976).

CONCLUSION

The trial court's refusal to permit cross-examination of a major prosecution witness as to criminal charges pending against him to show motive and bias violated petitioner's sixth and fourteenth amendment rights of confrontation. The basis for this determination is strengthened by the prosecution's nondisclosure of impeachment information concerning an extensive offer of immunity and aid to a crucial witness. This prosecutorial misbehavior resulted also in a denial of due process. Such evidence would have created a reasonable doubt as to petitioner's guilt in the mind of the jury. And furthermore, even if the omitted evidence does not meet the

strict materiality standard of *Agurs v. United States*, it surely would have affected the judgment of the jury and so a new trial is mandated by *Giglio v. United States*.

For these reasons, it is ORDERED that a writ of habeas corpus shall issue unless the state shall accord the petitioner a new trial within 60 days of the entry of judgment in this action.²³

SO ORDERED.

Dated at Hartford, Connecticut, this 20th day of January, 1977.

M. JOSEPH BLUMENFELD
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES EX REL.	}	CIVIL ACTION
SALVATORE ANNUNZIATO		
vs.		
JOHN R. MANSON, COMMISSIONER		
		No. H-75-387

JUDGMENT

The above-identified action came on for consideration by the court by the Honorable M. Joseph Blumenfeld, United States District Judge, of the Petitioner's Petition for a Writ of Habeas Corpus; and,

The court having considered all of the papers submitted by each of the parties filed its Memorandum of Decision January

²³ These 60 days shall be computed in accordance with the rules stated in 18 U.S.C. §1361(e), (h).

20, 1977, ordering that the Writ of Habeas Corpus shall issue unless the Petitioner is accorded a new trial within 60 days of the entry of Judgment;

It is therefore accordingly ORDERED and ADJUDGED that a Writ of Habeas Corpus shall issue within 60 days from the date hereof unless the Petitioner, Salvatore Annunziato, is accorded a new trial by the State of Connecticut within said 60-day period.

Dated at Hartford, Connecticut, this 21st day of January, 1977.

Clerk, United States District Court
SYLVESTER A. MARKOWSKI

EXHIBIT A

Excerpt from the cross-examination of Bruce Pino by Petitioners counsel, Mr. Jacobs, found at pages 773-774 and 781-795 of the state trial transcript.

"(By Mr. Jacobs) . . . Now you have, Mr. Pino, presently pending against you in this Superior Court —

Mr. GAFFNEY. I object, if the court please. We are talking about convictions. Counsel knows this is improper examination.

The COURT. Sustained.

Mr. JACOBS. I want to make an offer.

Mr. GAFFNEY. May the jury be excused, your Honor?

The COURT. I am going to sustain the objection. If there is going to be some argument, I will take it up later. But I won't excuse the jury every five minutes.

Mr. JACOBS. I reserve my right to make an offer of proof.

• • •

The COURT. I won't have anything in the absence of the jury until such time as we can finish the testimony and then I will excuse them and we will hear the arguments.

The COURT. You may proceed.

Are you claiming in substance, before you start in, are you claiming in substance that this situation with respect to the witness' interest is a similar situation to that which existed in the case of Mr. Gould?

Mr. JACOBS. Yes, your Honor; and more so.

The COURT. With respect to which I think I did admit — I did admit numbers of years. And I admit evidence, I believe, as to the Substituted Information.

Mr. JACOBS. And also of pending charges.

The COURT. That is with respect to matters which are pending at the time that he was interviewed.

Mr. FASANO. Yes.

The COURT. It was a U. S. Supreme Court case. Proceed.

Mr. JACOBS. With respect to this witness, I would call the court's attention and ask you to take judicial notice of file No. 15738, Superior Court.

The COURT. What number?

Mr. JACOBS. No. 15738.

This alleges in an Information filed by the State's Attorney, December 23, 1968, that this witness did possess or have under his control a quantity of narcotic drug, to wit, marijuana, in

violation of Section 19-481a. This is a charge on which he was bound over from the Sixth Circuit Court. He is also charged in a second offender —

The COURT. That is a matter which is pending?

Mr. JACOBS. Pending here in this court. He is charged in the same case with a second offender Information charging him that on December 19, 1963 and so forth that he is a second offender.

I claim also that under Section 19-481a that the penalty is up to five years. And as a second offender, in Section 54-118 he may receive a maximum of ten years.

The COURT. In other words, this is one file on possession of narcotics, a second offender, both under No. 17538 which is pending in this court at this time?

Mr. JACOBS. Yes.

Mr. GAFFNEY. *To complete the record on that matter, the defendant has pleaded not guilty and there is a serious question with regard to the search. That is the very problem you get into with regard to pending matters. That is the problem that the statute takes into consideration. And we are talking about convictions. The man pleaded not guilty. He is presumed to be innocent. And suddenly that type of charge is being used to impeach his credibility. It is improper. None of cases cited by counsel allows that to be introduced.*

Mr. JACOBS. I will cite you all the cases.

Mr. GAFFNEY. They do not stand for that proposition. The man is presumed innocent. He has pleaded not guilty in this court and he is challenging the search.

Mr. JACOBS. Mr. Gaffney misunderstands the purport of it.

The COURT. Go ahead, Mr. Jacobs.

Mr. JACOBS. *That is offered not to impeach him by showing an arrest but to show his interest and his motive for testifying* I have a lot of citations on that. I thought I gave it to the court before but I will give it to the court again.

Now with respect to the Exhibit for Identification, Exhibit 16 for Identification, I represent to the court and I offer an exhibit for identification, a three-count indictment in the U. S. District Court against Bruce Pino and John Reid alleging three violations of Title 18 U. S. Code; and, these are the same type of offenses that were pending against the witness Gould on which he was allowed to plead to a lesser charge.

The COURT. Is this something separate and apart from the 1969 charge which involved — he admitted to — which involved counterfeiting and bank robbery?

Mr. JACOBS. The counterfeiting was in Florida in 1967. The bank robbery was alleged to have occurred June 26, 1968. The certified record on the conviction on that charge is in Exhibit 16 for Identification. It was a Substituted Information charging conspiracy to violate Title 18 Section 2113a of the U. S. Code. And the original indictment charged three counts by the testimony, the witness called. You will recall Gould's testimony in his opinion he could receive the maximum of 25 years on the indictment for bank robbery. And the charges were the same.

In this particular case he received a suspended sentence of five years. Here is a fellow who has a case pending, he was convicted for three previous felonies that we know about and

he gets a suspended sentence on a bank robbery charge? And we are not entitled to inquire as to his interest or motive for testifying?

And I offer, I make an offer of proof, I ask it be marked for identification, the indictment in criminal No. 126 —

The COURT. Is this something separate from No. 16?

Mr. JACOBS. This is the original indictment, your Honor.

The COURT. For the same crime in this case which involves the same bank robbery charge?

Mr. JACOBS. The same charge. But he was convicted on a substituted charge, a lesser charge. He pleaded to and was allowed to plead to a lesser charge from this 3-count indictment.

I offer to show by testimony from this witness that there was pending against him this 3-count indictment in the U.S. District Court for which he received, he was allowed to plead to a substituted lesser offense.

The COURT. That my be marked Exhibit 18 for Identification, so it will be in the same category as the others.

COURT CLERK. It is 2 pages.

(Defendants' Exhibit 18 marked for Identification: a two-page indictment-Pino.)

Mr. JACOBS. *I will also offer to prove through cross-examination of the witness, Bruce Pino, that he has confessed in writing to the police on May 30 1969, at West Haven, that he admitted to the crime of arson by throwing a molotov cocktail at the funeral home that was burned for which he received \$300. And that he has not been arrested on this charge.*

I hold in my hand and offer it to be marked for identification, his written confession to the police.

The COURT. Mark it Exhibit 19 for Identification.

Court Clerk. It is seven pages.

(Defendant's Exhibit 19 marked for Identification: a 7-page confession-Pino.)

Mr. JACOBS. *Now I also offer to show through cross-examination of this witness, that on either June 19th or June 20th of 1968 he shot Paul Fountaine at New Haven in front of Chip's Lounge.*

The COURT. What are you offering? Are you offering something for identification?

Mr. JACOBS. *No, I said only by cross-examination of this witness. This is a subject I want to question him on.*

The COURT. Is this anything he has been charged with?

Mr. JACOBS. *He has not been charged with it.*

The COURT. Wouldn't this open the book, so to speak, to ask him if he shot Abraham Lincoln?

Mr. JACOBS. I suppose.

The COURT. That is opening it up pretty wide. When you have a written confession, that is one category. But when you propose to ask him: Did he shoot somebody? — After all, you are opening it up wide there.

Mr. JACOBS. I think it is proper cross-examination, your Honor.

Mr. FASANO. Not to repeat but on this last one, under the *Shailer* case, I think it is 78 Conn., I should think that would be proper cross-examination.

The COURT. This is just getting one step further and one step further and one step further away. We are getting now from convictions to charges to confessions. And then to questions about a crime with which there is no evidence at all.

I just want to point out my thinking on how far this is going. *I think it is going to a ridiculous extreme.*

Mr. JACOBS. What we are talking about is the interest of the witness and motive for testifying. If he has testified to a crime, if they show he shot Paul Fountaine, I don't know if he did or not, but I can ask him about it.

Mr. GAFFNEY. That is the whole problem, the point of the matter is there might be a number of reasons why a man might not be arrested on a particular charge.

The COURT. There might be a number of reasons why he might be charged with a certain crime, too.

Mr. JACOBS. But the pendency of the charge —

The COURT. Then under the subject of interest, according to your theory on the claim of proving interest rather than attacking credibility, there would be no limit to what you can go into on the subject on proving interest. I mean the statute does impose certain limits.

Now, if you claim that you can go beyond the statute, beyond expressed convictions, to show interest — although you couldn't do it to attack credibility — it just seems to me there is no limit at all, no limit to which you can go. I don't even think former Chief Justice Earl Warren went that far.

Mr. JACOBS. We have to distinguish, with respect to the statute because it talks about several things. It talks about convictions and it talks about interest.

Now the fact remains, and Wigmore says so, that pendency of any indictment against a witness indicates a similar possibility of his currying favor by testifying for the State, Section 1967 of Wigmore. So we can show the pendency of these particular things. We can show the promises of immunity or lesser sentences. We can show he was not arrested for particular charges that he has confessed to or to which the police know about but have not charged him. And we went through the same thing with Gould.

The COURT. Not nearly this far with Gould. I will admit, I have to be consistent, what you are able to do with Gould you should be able to do with this witness. But we didn't get into anything like this with respect to Gould. We didn't get into: Are you the one that shot Paul Fountaine?

Mr. JACOBS. Let me cite to your Honor 62 ALR 2d at 624, the rule allowing greater or liberal latitude by the defendant of a witness for the prosecution with respect to his motive to testifying, which is *especially applicable where the witness is an accomplice of the accused* or is charged with or threatened with criminal prosecution for an alleged offense not connected with that with which the person against whom he testified is charged; and, whose testimony against the defendant may be influenced by promise or hope or an expectation of immunity or leniency in consideration for testifying against a defendant.

There is no question all of these things we are talking about here is admissible against the question of interest. I am not claiming it as to convictions. It is admissible as to pendency

of criminal matters and the confessions he has made and the fact that he is guilty of criminal matters and he has not yet been charged, are all admissible to show interest and motive.

The COURT. You don't have any Connecticut law?

Mr. GAFFNEY. I have 148 Conn. 666, the *Vegel* case. It indicates there —

The COURT. The citation?

Mr. GAFFNEY. 148 Conn. 666 at 675:

The examination could be permitted to extend to questions as to particular acts of misconduct, although those acts were themselves relevant to the issues in the case as framed by the pleadings, if they showed a lack of veracity and not merely general bad character.

"Thus, unless particular acts of misconduct are indicative of a lack of veracity, it is error to permit cross-examination concerning them however much they may be indicative of bad moral character."

Mr. JACOBS. That is an entirely different subject.

Mr. JACOBS. We are talking about a shooting of a man.

The COURT. I think there is a parallel in what the court allows on the question of moral character and veracity and interest.

Mr. JACOBS. No, there isn't.

The COURT. They are sort of lumped together. They are lumped together in the same statute.

Mr. GAFFNEY. He is trying to impeach the witness.

Mr. JACOBS. Of course I am.

Mr. GAFFNEY. We are talking about impeachment and the manner in which you can do it. It is severely limited. *You can't bring in the shooting of a man not before the court.* It is a prior act. It is an act of misconduct.

The COURT. I won't let it in.

Mr. GAFFNEY. Where will you draw the line?

The COURT. I will decide that.

Mr. JACOBS. I think we ought to distinguish this.

The COURT. They are from the same statute and they both have to do with impeaching the witness.

Mr. JACOBS. I agree they have to do with the impeaching of the witness. There are a number of ways to impeach a witness.

You may show his conviction of a felony. That we have done. You may also show, as Mr. Gaffney cited, you may show within the discretion of the court specific acts of misconduct. It may not even be the grounds for the arrest.

The COURT. You are aware of the recent decision of the Supreme Court which has caused quite a bit of criticism among the State's Attorneys which goes so far to say it is within the court's discretion to decide whether the prejudicial act — would go so far to make it improper to allow the admission. And the court has discretion even to keep out a conviction.

Mr. JACOBS. I recognize that there is the decision in the *Marquise* case. This is an entirely separate doctrine.

The COURT. But you can't separate them. After all, how can you possibly admit it to show interest without showing it to impeach credibility if it is admitted?

Mr. JACOBS. I am not saying it is admitted to impeach credibility. I claim it to show interest and bias and motive.

Now, these are all matters that should go to whether or not you believe the witness. But it has nothing to do with the doctrine dealing with specific acts of misconduct. The doctrine of interest is not limited by the court's discretion on the question of admissibility of evidence to show the interest of the witness in testifying, his motive to testify, whether any promises that have been made to him and things that may have happened to him. These are not discretionary matters. These are matters we are entitled to have as a matter of right.

Mr. GAFFNEY. May I inquire, what type of interest does this witness have in the shooting of Paul Fountaine, pecuniary? — Proprietary? We throw the word "interest" around here. How does the shooting of a man come under the doctrine of interest and, therefore, has an interest in this case? Because he shot Paul Fountaine, if he did.

The COURT. I think I know what Mr. Jacobs is driving at. He is driving towards where this is *something the police know and he has an interest in cooperating with the police so they won't do anything about the charge, I assume.*

Mr. JACOBS. Exactly. And the same thing with the arson thing. I say if you permit that sort of thing, there is absolutely no limit. There has to be a limit some place.

The COURT. It seems to me the legislature, in its wisdom, has tried to establish that limit by stating what can be admitted. I think it applies to interest and motive as well as to credibility.

Now, I have indicated in the case of Gould, I thought you were entitled to show there was something pending. And Inspector Ahern had indicated he would do everything he could to get a break for him. Why I ruled that you were entitled to bring that in with respect to matters which were pending despite the fact that there is a risk involved that there might be some other defense motions to suppress and so forth — but I am not going to carry it as far as you want me to.

Mr. GAFFNEY. In the matter that was pending, it was the sentencing. We had a conviction on the record. It was a pending sentence. There is an entirely different matter to have a pending file to which he has pleaded not guilty to. He is presumed innocent. And to use that to impeach the witness —

The COURT. I was referring to other matters, the substituted charges.

Mr. JACOBS. The law is without question that I am allowed to show the pending matter. We are not talking about the fact that the man is presumed to be innocent. We are using it to show interest of the witness.

The same thing goes with respect to his confession in arson. And in the same citations which are equally applicable.

The COURT. Here again, I will take what has to be the court's best way out on matters which arise in this case from day to day and say this is something that I will have to give consideration to between now and tomorrow morning at 10:00 o'clock.

I will do my best to arrive at some conclusion by that time. If there is anything you want to give me on it to consider, I will be glad to consider it.

Mr. JACOBS. *Most of the law is in Section 1967, Wigmore.* They talk about this principle which applies a fortiori — “. . . that has not resulted in charges brought against the witness.” There are other matters I want to cross-examine him about and I will be glad to take these matters up in the absence of the jury . . .

EXHIBIT B

(By Assistant State's Attorney Redway)

Q. Were there any other offenses that were pending against you?

A. I have one offense pending in this court, possession of marijuana, which I was arrested for in December of '68.

Mr. ALBOM. I still don't get him, and he slurs.

Mr. REDWAY. I can hear him.

The COURT. Some of the jurors have indicated that they are having a little difficulty.

Please speak as plainly as you can and keep your voice up a little bit.

A. I have one case pending in this court *for possession of marijuana.* I was arrested, December of '68.

Q. Was that part of the understanding that you made on January 26, 1970?

A. Yes, it was.

Q. And what was your understanding of the agreement in that regard?

A. That I wouldn't go to jail for it.

Q. All right. Why did you make this agreement, Mr. Pino?

A. It was about the only way I could break away from the criminal element that I was dealing with, was the main reason.

Q. And at the time you were incarcerated, is that correct?

A. Yes.

Q. And you had not made bond?

A. No, I didn't.

Q. Who did you make this agreement with?

A. Made this agreement with Steve Ahern, Ray Conley, an FBI agent, and Stanley Sagarin, who represented the government, he was a U.S. attorney, and Mr. Markle.

EXHIBIT C

Portion of transcript of the hearing on the merits held before the District Court, Blumenfeld, J. in January.

Mr. JACOBS. The Exhibit B, which is the testimony of the witness Pino in the Porto case a year later, indicates that the agreement was made with Mr. Sagarin, representing the United States Government — he was then Assistant United States Attorney — and with Mr. Markle, who was the State's Attorney then and at all times since.

The COURT. An agreement to do what?

Mr. JACOBS. An agreement that he would not have to serve any time for the pending marijuana charges.

The COURT. Well, you've got some evidence, then.

Mr. JACOBS. It's all in here, your Honor.

The COURT. It's all in there from Pino?

Mr. JACOBS. Right.

The COURT. But it isn't there from Sagarin or Markle. The thing has not been decided that he had that. That's what he says.

EXHIBIT D

From transcript of state habeas court hearing before Judge Martin.

By Mr. JACOBS. May it please the court, with respect to Exhibit "C", the transcript of the testimony of Bruno Pino in the case of Albert Porto which occurred after the trial of the Annunziato case, we have stipulated with the — with Mr. Diette representing the State's Attorney as follows:

That the testimony of Mr. Pino as contained in that transcript with respect to the statement that *he reached with the State's Attorney's office in New Haven for favorable treatment is, in fact, true*; and that he, in fact, prior to his testimony in the Annunziato case, had agreed with the State's Attorney's office in New Haven and they had agreed with him to give him favorable treatment, among other things for his testimony in the case of *State vs. Salvatore Annunziato*, being file #16,800, in the Superior Court at New Haven County.

I — the Court Reporter calls my attention to something I should, perhaps, clarify for the record. There were two individuals on trial, at the same time, in the — along with Salvatore Annunziato. Salvatore's case was 16,800. There was

State vs. Francesco Annunziato, 16,795. That's the reason that both numbers appear on the transcript, and the only case, of course, that we are here on, today, is the — has to do with the case against Salvatore and which is 16,800.

I have asked the Court Reporter to just read me back my last statement to make sure I had covered the points in question.

The COURT. All right.

(The Reporter read the indicated material.)

By Mr. JACOBS. Yes. I would like to add to that, when I talked about the agreement by the State's Attorney's office for New Haven County to give favorable treatment to Bruno Pino, I referred to favorable treatment on the charges then pending against him in the Superior Court for New Haven County that are set forth in Exhibit #1 on, Exhibits that we have offered here, the possession of drug charges and the second offender charges which were, in fact, nolle after the — sometime after the Annunziato case was tried.

If I correctly stated, I would rather stand corrected.

By Mr. DIETTE. I would say, basically, yes, sir.

EXHIBIT E

Excerpt from the state trial transcript of the testimony of Edward Gould, Tr. p. 78.

"... In March of 1970, I talked with Salvatore Annunziato. I asked him what the reason was that he wanted to kill me. I never did no harm to this man. That there was no need to do this here to me. I asked him why did he do this to me. He said 'I want to kill you because you killed my brother-in law'."

EXHIBIT G

Excerpt from the state trial transcript; the re-direct examination of Bruno Pino, Jr., pp. 873-874.

"... (By Mr. GAFFNEY) Q. Did anyone ask you to give a statement, 'because we have to get Midge,' or words to that effect?

A. No.

Q. Did anyone ever make a promise for your testimony?

A. No.

Q. Has anyone ever made a deal to you or with you?

A. No.

Q. Has anyone ever threatened you in any way with regard to your testimony.

A. No."